

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

ATLANTA DIVISION

FAYELYNN SAMS, Individually, and on
behalf of a class of all others similarly
situated,

Plaintiffs,

v.

YAHOO! INC.,

Defendant.

Civil Action File No.

10-CV-03509-JEC

YAHOO! INC.'S RESPONSE TO PLAINTIFF'S MOTION TO TRANSFER

Defendant Yahoo! Inc. ("Yahoo!") hereby files this response to Plaintiff's Motion to Transfer Venue ("motion to transfer") (Dkt. 14). In short, Yahoo! agrees that if this case should be heard by any federal court, the United States District Court for the Northern District California is the appropriate forum to resolve this dispute and therefore Yahoo! agrees that transfer is one appropriate remedy.

As Yahoo! described in its Memorandum in Support of its Motion to Dismiss Plaintiff's Complaint (Dkt. 5), when Plaintiff Sams signed up for Yahoo!'s free email service, she agreed to a Terms of Service which plainly requires all causes of action to be filed in state or federal courts in California. (Dkt. 5 at 8-11). Yahoo! described said terms and supported their enforceability in

detail in its Memorandum in Support of its Motion to Dismiss Plaintiff's Complaint (Dkt. 5). *Id.* Rather than dismissing and refiling her action in California, Plaintiff Sams has chosen to amend her complaint, add causes of action under California state law, and then ask the Court to transfer the Amended Complaint to the United States District Court for the Northern District of California. (*See* First Amended Complaint, Dkt. 13.)

Although Yahoo! believes that this case is barred by the clear immunity provisions contained in the Stored Communications Act and does not intend to waive its position that a transfer of venue would be futile, Yahoo! does not seek to waste judicial resources by contesting the transfer on the grounds of futility just to then litigate the same issues in California should the case ultimately be transferred. Moreover, as Plaintiff Sams has already used up her amendment as of right by filing an Amended Complaint prior to requesting transfer, a dismissal at this stage followed by refiling in California might provide Sams with additional opportunities to amend the complaint, requiring an additional round of briefing. Fed. R. Civ. P. 15(a)(1) ("A party may amend its pleading *once* as a matter of course ..." (emphasis added)).

Accordingly, for the reasons stated above, Yahoo! consents to the transfer of this case to the United States District Court for the Northern District of California, while reserving all rights to argue that Sams' amended complaint fails to state a

claim upon which relief can be granted, and is barred by the immunity provisions of the Stored Communications Act. 18 U.S.C. § 2703(e) & 2707(e). Following the filing of this motion, Yahoo! intends to join with Sams in a joint motion to stay all pending deadlines (including deadlines for initial disclosures) until the Court has ruled on Plaintiff's motion to transfer so that if the motion to transfer is granted, the preliminary filings can be done in accordance with the Local Rules of the transferee court.

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2010, I electronically filed **YAHOO! INC.'S RESPONSE TO PLAINTIFF'S MOTION TO TRANSFER** with the Clerk of Court using CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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